

No. 9(1)81-6Lab./14875.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s. Kalkaji Engineering Company Plot No. 248, Sector 24, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD

Reference No. 541 of 1980
between

SHRI JAGDISH YADAV, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S.
KALKAJI ENGINEERING COMPANY PLOT NO. 248, SECTOR 24, FARIDABAD

Present—

Shri Yoginder Singh, for the workman.

Shri Ram Sarup Arora, for the respondent management.

AWARD

This reference No. 541 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/142-80/58608, dated 1st December, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Jagdish Yadav, workman and the management of M/s. Kalkaji Engineering Company, Plot No. 248, Sector 24, Faridabad. The term of the reference was :—

Whether the termination of services of Shri Jagdish Yadav was justified and in order ? If not, to what relief is he entitled ?

After receiving this reference, notices were served to the parties. The parties put their presence in the court and filed their pleadings. The workman did not file his claim statement or joinder even after the opportunity given, the representative stated that his demand notice may be treated as claim statement. According to demand notice the case of the workman is that he joined the factory of the respondent on 5th July, 1977 as helper at the rate of Rs. 240 per month and the respondent terminated the service on 7th June, 1980 when he reached on that day in the factory. The respondent asked the workman to sign some papers. The workman refused to sign on them. On that ground his services were terminated. The workman sent one letter to the respondent management on 30th June, 1980 and one to the Labour Inspector on 8th July, 1980, but received no reply. The case of the respondent according to its written statement is that the workman joined the factory on 1st December, 1978 and worked upto 6th February, 1979 and after receiving his full and final in the payment of wages register, the workman did not come in the factory. So it is not a case of termination. The workman took his full and final of his own will. So he is not entitled to any benefit of any sort. The termination as stated by the workman on 7th June, 1980 does not arise at all. When the workman took his full and final on 7th February, 1979. His demand notice and reference is motivated to harass the management and to extract money by illegal means.

On the pleadings of the parties, the following issues are framed :—

1. Whether the workman collected his full and final and left the job on his own accord ? If so, to what effect ?
2. Whether the termination of service of the workman is proper, justified and in order ? If not, to what relief is he entitled ?
3. Relief.

My findings on issues are as under :—

Issue No. 1.—

The representative of the management argued that the workman produced no evidence on record that he joined the factory on 5th July, 1977 at the rate of Rs. 240 per month as helper. There is no documentary or oral evidence in this respect that he was appointed in the year, 1977. The workman could produce one or two other workmen of the factory to prove this fact that he was employed in the year 1977 and till then he is working in the factory and removed on 7th June, 1980, but the workman has failed to produce any witness. The workman has not filed even the claim statement and rejoinder to clear his position after the demand notice, so without any proof of appointment this cannot be treated that the workman was appointed on the date given by the workman. The management can also say in the court that the workman was not appointed in the factory at all but the respondent management came with clean hands that the workman joined the factory on 1st December, 1978 and worked upto 6th February, 1979. After that he demanded his full and final which was paid to him according to Exhibit MW-2 at Mark 'B'. The respondent has produced copy of the payment of wages register for the month of December, 1978—M-1 and January, 1979—M-3 to prove this fact that the workman was appointed in the month of December, 1978 and took his full and final in the month of February, 1979. The workman in his cross-examination has admitted his signatures on these three documents. After admitting the signatures on the documents it is very clear that he had admitted the whole fact of his full and final. This whole evidence shows that the workman collected his full and final and left his job of his own accord.

The representative of the workman argued on this issue that the workman was appointed on 5th July, 1977 without any appointment letter and the workman was not issued and card or ESI card. There is no union in the factory so it is very difficult to produce any evidence of any workman for this workman. The respondent's plea of full and final is totally wrong because if the workman had taken his full and final they should have got the resignation of the workman from the job which they have failed to get which shows that the workman has not taken his full and final on 7th February, 1979. The workman worked with the respondent upto 7th June, 1980 and thereafter the respondent terminated the services of the workman without any reason except that they want the signatures of the workman on some blank papers which the workman refused to do. On that ground the respondent terminated the services of the workman and the workman had not taken his full and final as alleged by the respondent.

After hearing the arguments of both the parties on this issue, I am of the view that without any evidence on record how the workman can say that he was appointed in the year 1977 and terminated in the year 1980. The respondent has produced the copies of the wages register on which they have paid wages of the workman for the month of December, 1978 and January, February, 1979 which the workman has admitted in his cross-examination. He has not stated in his cross-examination with the admission of the signature that the full and final written of this sheet was not written at that time and he received the amount on 7th February, 1979. So without any explanation, it is proved that the workman took his full and final as given in Exhibit MW-2 and after taking his full and final, left the job of his own. So this issue is decided in favour of the respondent and against the workman.

Issue No. 2—

Issue No. 2 is as per reference ?

After deciding issue No. 1 when it is decided in issue No. 1 that the workman had taken his full and final of his own will then there is no need to discuss this issue that whether the termination was justified and proper. So the respondent did not terminate the services of the workman but he left the job of his own and he is not entitled to any relief.

Dated, the 4th December, 1981

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 3397, dated 11th December, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Government of Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

The 13th January, 1982

No. 9(1)81-6Lab./14856.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s Elson Cotton Mills Ltd., 23rd Milestone, Mathura Road, Ballabgarh.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD

Reference No. 79 of 1979

between

SHRI SAT NARAIN SHARMA, WORKMAN AND THE MANAGEMENT OF M/S ELSON
COTTON MILLS LTD., 23RD MILE STONE, MATHURA ROAD, BALLABGARH

Presents :—

Shri Sagar Ram Gupta for the workman.

Shri R. N. Rai for the respondent-management.

AWARD

This reference No. 79 of 1979 has been referred to this Court by the Hon'ble Governor of Haryana,— vide his order No. ID/FD/120-79/57558, dated 20th December, 1979, under section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri Sat Narain Sharma, and the respondent management, of M/s Elson Cotton Mills Ltd., 23rd Milestone, Mathura Road, Ballabgarh. The terms of the reference was :—

Whether the termination of services of Shri Sat Narain Sharma was justified and in order? If not, to what relief is he entitled?

On receiving this reference, the notices were issued to the parties and parties appeared to file their pleadings. The case of the workman according to the demand and claim statement is that the workman joined the service on 23rd February, 1968 as Excise Clerk and respondent terminated his services on 25th August, 1979 without any notice or reason. Later on when the respondent felt that the workman would contest the termination they made out the story of retrenchment. The job which the workman was doing cannot be abolished so long as the mill exist. The respondent alleged that the workman is retrenched which is not admitted by the workman and describe this an illegal order because according to the retrenchment provision the respondent did not give the notice as required by law nor any notice pay given or paid. No retrenchment compensation was paid or offered before 25th August, 1979. The respondent did not displayed or prepared the seniority list which is required under rules nor they sought permission from the Government. The provisions of Chapter V-B of the Industrial Disputes Act have been clearly violated. The employer did not even send necessary information in the prescribed form. The principles of last come first go has been violated. So his retrenchment is ineffective and void. The termination of service of the workman is quite illegal and unjustified and the workman is entitled to the reinstatement with full back wages and continuity of service.

The case of the respondent according to the written statement is that the claimant is not a workman under section 2(S) of the Industrial Disputes Act, 1947. Hence he is not entitled to raise any Industrial Dispute under the provisions of the said Act and the reference made by the Haryana Government is incompetent and bad in law. The respondent has admitted the date of the appointment of the claimant as Excise Clerk, with effect from 22nd February, 1968 and he was promoted as Excise and Godown Incharge with effect from December, 1977 and he was drawing Rs. 580 per month as his salary when he was promoted and he was holding a supervisory and confidential position in the organisation. He used to supervise the work of other as well as the contractor's men to do the work of packing, loading and unloading of yarn. The claimant was authorised by the Board of Directors to sign all documents pertaining to the excise matters. He used to sign the excise gate passes (GP-1) which can be signed by no person less than the status of an Incharge. He used to sign the statement of stocks which was being submitted to the authorities. He used to verify the bills of the contractor. In this way he was holding the position of a supervisor. He was terminated in the year 1978 because there was a change in the management of the company. The new management as a policy decided to stock the yarn at different places and set up small godowns in different areas and it was felt by the management that it was not necessary to have a centralised godown in the factory and so the services of Excise and Godown Incharge were not needed under the above policy and post of Excise and Godown Incharge was abolished, so service of the workman was terminated on 23rd August, 1979 and the orders were given to the claimant which he refused to take and the same were sent through the registered post. His dues were also sent including gratuity and compensation of service which the claimant received. The claimant is not a workman under section 2(S) of the Industrial Disputes Act and his services were no more required by the respondent, so terminated as retrenched. Hence this reference is bad in law. On the pleadings of the parties, the following issues were framed :

(1) Whether the workman was working in supervisory capacity and not covered under the definition of workman in the Industrial Disputes Act, 1947? If not, to what effect?

(2) Whether the termination of services of the workman is proper, justified and in order? If not, to what relief is he entitled?

The respondent produced one oral witness Shri Subhash Makhija, Manager of the factory as MW-1 and produced Exhibits M-1 to M-18 documents in the case. The claimant produced three oral witnesses Shri Sukh Lal, Excise Clerk of the factory as WW-1, who produced the summoned record and WW-2 claimant himself and WW-3 Ex-Accounts Officer of the company and produced Exhibit W-1 to W-8 documents. My findings on issue No. 1 is as under :—

Issue No. 1—

This Issue No. 1 is whether the claimant was working in the supervisory capacity and not covered under the definition of the 2(S) of the Industrial Disputes Act, 1947. The representative of the management argued that the claimant was not covered under the definition of 2(S) of the Industrial Disputes Act, 1947 as he used to sign the statement of the stock and other monthly statement, the declarations on behalf of the respondent management and the gate passes of the respondent management. The Board of the Directors had

authorised the workman to sign the same, in their resolution, dated 13th October, 1978, which is Exhibit M-1 and the same was sent to the Supdt. Central Excise,—vide letter, dated 4th November, 1978 which is Exhibit M-2 with the specimen signatures of the claimant which is Exhibit M-3. The claimant used to sign the gate passes which are Exhibit M-4 to M-8 which bears the signature of the claimant which are admitted by the claimant. He used to sign declaration of the stock which is Exhibit M-9 and Exhibit M-10. He used to verify the contractor's bills which are Exhibit M-11 to M-14. The bills are paid after the verification. The claimant was appointed on 23rd February, 1968 as Excise Clerk. In December, 1977 he was promoted as Excise Godown Incharge and after this promotion he was not a clerk but comes under the supervisory staff. He used to sign the attendance register which was meant for the supervisory staff and used to supervise the work of the other workman. There was a clerk under him to maintain the record of the godown, and he used to attend the office of the excise department on behalf of the respondent management for all purposes. In September, 1978 there was a change in the management and the new management took over in the month of June, 1979. The new management decided to shift the excise godown from mill and the excise godown was shifted in different places in the area. After shifting the excise godown from the factory there was no need of supervisory staff to look after the excise godown so the services of the claimant was terminated and he was paid his all dues including gratuity,—vide Exhibit M-17 and M-17-A which the claimant received so in these circumstances the claimant does not come under the definition of a workman and he was a supervisor in the factory.

The representative of the workman argued that the claimant was appointed as Excise Clerk in the year, 1968 and worked as Clerk till the termination of his services. He was receiving Rs. 400 upto the year 1976 and after that at the time of termination he was drawing Rs. 580 per month, which is admitted by MW-1 in his statement. He argued that the respondent has failed to produce any documents on the file showing that the workman was promoted as supervisory staff. The witness of the respondent MW-1 has admitted in his statement that there was no written order given to the claimant for his promotion. It was a oral order which can not be treated as truth as stated in the written statement of the respondent. He further argued that, the witness MW-1 has also admitted in his statement that Exhibit M-4 to M-10 are prepared by the claimant with his own hand and signed the same, which shows that the claimant used to work with his own hand as a clerk. He also referred the statement of the claimant as WW-2 in which he has shown the books written by his own hand which were brought by the respondent clerk which has come as WW-1. All the books are written by his own hand and these are so voluminous that a ordinary clerk can not write these books. The claimant had to work eight or nine hours daily for writing these books. The person writing the books through out the day cannot be said to be holding the supervisory post. The representative of the workman further argued that the respondent witness MW-1 has admitted in his cross-examination that the bills and other documents were used to be prepared by the claimant. He argued that after this admission from the respondent witness, clears the position of the claimant that the claimant was not working as supervisor but as a clerk.

After hearing the arguments of both the parties and going through the file, I am of the view that the person writing so many books daily with his own hand which were brought in the court and shown and the representative of the respondent could not rebut the same, clears the position of the claimant that he was working as clerk and not as supervisory staff. The respondent witness MW-1 has also admitted these facts in his statement. The claimant has no such duties which can be said to be supervisory duties. The respondent has failed to prove this fact that the workman was working in the supervisory capacity and not as a workman. So, this issue is decided in favour of the workman and against the respondent-management.

Issue No. 2

Issue No. 2 is as per reference. The respondent's representative argued this issue that after the new management taken over and changed the policy for shifting Excise Godown, the services of the claimant was surplus and the management was not in need of his services so his services were terminated as retrenched. The representative of the workman argued that the respondent-management did not want the old staff to continue in service so they terminated the services of the workman to make place for their own man. He further argued that after his termination as admitted by the respondent witness MW-1 Shri Naveen Bansal and Radhey Sham used to do the same work which the workman used to do. So it proves that the workman was not retrenched and his post was not abolished rather he was terminated to replace their own man. He further argued that the respondent had not complied with the provisions of retrenchment. The respondent had not given the notice to the workman which is required by the law. They had not paid or offered the retrenchment compensation which is an essential factor required by law without which the termination is void and ineffective. So it is not a case of retrenchment but a termination which is illegal and un-justified at the part of the management. I agree with the arguments of the representative of the workman and hold that the termination of the workman is not justified and in order and the workman is entitled for his re-instatement with continuity of service and with full back wages. No order as to costs. This may be read in answer to this reference.

Dated 9th December, 1981.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana, Faridabad.

Endstt. No. 3417, dated the 11th December, 1981

Forwarded (four copies) to the Commissioner and Secretary to Government of Haryana, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947, with the request that the receipt of the above-said award may please be acknowledged within week's time.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana, Faridabad